ACCOUNTANCY

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CONTENTS

	PAGE
PROFESSIONAL NOTES	
1944	61
National Reconstruction	61
Industrial Planning	62
Tax Reserve Certificates and Borrowed Money	62
The Education Bill	62
Incorporated Accountants and Students in London	62
Post-War Licensing of Shops	63
Rent Control Committee	63
Petrol Allowances for Accountants	63
EDITORIAL	
Capital Reconstruction Schemes	64
LEADING ARTICLES	
"Capital Employed" and Government Price-Fixing	65
LEADING ARTICLES—*contd.*	
Three Years of Lend-Lease	67
Settling Prices for War Stores	69
E.P.T. Problems	70
TAXATION	
ARTICLE: Procedure at Appeals before the Commissioners	72
E.P.T.—Working Proprietor Standard	73
Estate Duty—Gifts made in Consideration of Marriage	73
Legacies to Executors	73
Life Assurance Commission	73
Dominion and Foreign War Damage Schemes	73
RECENT TAX CASES	74
PUBLICATIONS	75
FINANCE	
The Month in the City	76
Points from Published Accounts	77
LAW	
Legal Notes	78
The Emergency Acts and Orders	79
SOCIETY OF INCORPORATED ACCOUNTANTS	
Council Meeting	80
Examination Results in South Africa	80
Victorian Branch	80
Personal Notes	80
Obituary	80

PROFESSIONAL NOTES

1944

The nation greets the New Year hopefully, though with full realisation of the magnitude of the tasks ahead. Immediate prospects are of an intensification of military activity concurrently with legislative and other measures to prepare for the hoped-for coming of peace. Parliament faces a full programme, commencing with the Education Bill—to which we refer more fully in a later note—and including the implementation of proposals on social security, land utilisation, industrial location, electoral reform, workmen's compensation, the training and restoration to employment of disabled persons and of those who will be discharged from H.M. Forces, and other matters conducive to the provision of "food, work and homes" for all after the war. Corresponding activity proceeds in the accountancy profession, where both informally and officially urgent consideration is directed to the post-war needs of members and students now serving with H.M. Forces. Every member of the profession will wish all possible assistance to be rendered to those whose careers have been interrupted by the war; and among the members who have remained in the profession, many have already expressed their desire to give such personal service as may be practicable. It is the universal hope that these problems may demand solution before the advent of 1945. Meanwhile the duty of all is to relax no effort towards the prosecution of the war.

National Reconstruction

Our post-war world is beginning to assume shape, if only on paper—the lines of reconstruction, though still blurred, are emerging. Mr. Churchill drew the general plan when he declared that our objective must be to find food, work, and homes for all. Mr. Lyttelton gave industry a lead when he indicated that domestic civilian consumption, exports, and relief of the liberated territories would come first, in that order. Now Lord Woolton has gone into further detail. His warning that the Uthwatt, Barlow, Scott and Beveridge Reports could not be adopted whole without consideration, that the Government could not contract out of its responsibilities by appointing commissions, was negative, if timely. More positive were his declarations that land policy must be settled without delay; that the Government's proposals on social insurance and security would be brought forward promptly; that "carefully considered proposals" must be made as to which controls should go, and which should stay during the transitional period when there would be great shortages of labour and materials; and that preparations are being made to ensure a "flying start for housing." His references to agriculture and afforestation are a reminder of the wide sweep which national reconstruction is destined to have, and his admission that failure in his task would indicate his own lack of capacity suggests that strong powers have been

vested in the Ministry of Reconstruction. Sir William Jowett, Minister without Portfolio, has promised that two White Papers, one on the Beveridge Report and one on the medical services, will be brought forward in the New Year for certain, and that possibly a third, on workmen's compensation, will also be published. The need for prompt and firm decisions on matters of post-war policy scarcely requires emphasis in the light of the developing military situation.

Industrial Planning

This need is illustrated by the plea of the Internal Combustion Engine Manufacturers' Association that they should have early knowledge of the Government's export trade policy. In this particular industry the problems of change-over from war to peace are bound to be particularly troublesome. The manufacturers are clearly apprehensive of the consequences that may flow from the "break clauses" in Government contracts, and they suggest that when these come into operation each firm should be kept fully employed for a year on a national planned scheme of production. Where necessary, the Government would make payments on account for goods put into stock, these to be sold eventually on the Government's behalf. Proposals are also made in relation to the disposal of used Government engines, machines, stores, etc. These should, it is suggested, be supplied to the devastated areas, and allocated to technical institutes and the like, the balance to be taken over by an organisation representative of the industry and the Government, and disposed of by agreement. This is a constructive attempt to define and anticipate the difficulties of the future. But there is no clear evidence that to keep the industry running at full capacity on new production, while safeguarding the surplus stores position, would be to the greatest national advantage. After the war we may well need mobility of labour, rather than fixity of labour; and the minimum requirements of national interest may demand only that the labour force and the technical equipment of the industry be kept at such a level that expanded operations may promptly be achieved. Minimum requirements are admittedly not optimum requirements, but, with the best will in the world, there are many branches of national life in which the optimum will not be capable of achievement in the transition period if essentials are to be placed first.

Tax Reserve Certificates and Borrowed Money

We have been asked to remind our readers of the undesirability of financing subscriptions to tax reserve certificates by means of borrowed money. A statement by the late Chancellor of the Exchequer was published in our issue of February, 1942, and the present Chancellor has reaffirmed the Government's attitude in reply to a recent question by Sir George Broadbridge, M.P. Sir John Anderson said: "It is entirely contrary to the wishes of the Government that subscriptions to tax reserve certificates should be financed by borrowed money. The main purpose of the certificates is to help taxpayers who have material sums to meet by direct payment to set aside those sums as their profits or incomes accrue and are available in cash."

The Education Bill

The Government's proposals for education have now been crystallised in the form of a Bill, which is expected to be the subject of two days' debate on second reading during the first week after Parliament reassembles. Existing legislation will be repealed and replaced by the new provisions. The new Bill includes far-reaching reforms based on the White Paper, "Educational Reconstruction," which was discussed in the Editorial in our September issue. The present Bill does not include any provisions to implement those of the recommendations of the Norwood Committee relating to examinations in secondary schools; we assume, therefore, that the School Certificate examinations will continue on present lines for the time being and that any changes will be authorised by regulation. The school-leaving age is to be raised to 15 without exceptions on April 1, 1945. This date may, however, be postponed by not more than two years if it has proved impossible to secure an adequate supply of teachers and of premises. The age will be further raised to 16 by Order in Council as soon as possible. The parent of a child of compulsory school age will be required to cause him to receive efficient full-time education suitable to his age, ability and aptitude. Local education authorities will be county and county borough councils. They must secure adequate provision of primary and secondary schools—the latter category to embrace the present senior elementary, junior technical and secondary schools—and must also provide adequate facilities for technical, commercial and art education and general adult education. Young people up to the age of 18 will be required to attend "young people's colleges" in working hours for one day or two half-days for 44 weeks each year, or, alternatively, for a continuous period of eight weeks or two periods of four weeks each year. The date of commencement of this provision is to be fixed by Order in Council. No tuition fees may be charged at any school maintained by a local education authority, and power is given to the local authority or the Minister to pay the fees of children attending other schools. Private schools are to be registered and subject to inspection.

Incorporated Accountants and Students in London

The first of a series of meetings of London members was held at Incorporated Accountants' Hall on Wednesday, December 1, 1943, at 4 p.m., when Mr. C. V. Best, F.S.A.A., opened an informal discussion on Government Price Control, with Mr. F. Martin Jenkins, F.S.A.A., in the Chair. There was a good attendance of over forty members, many of whom joined in an interesting discussion. Mr. Best dealt with many important aspects of the subject in a thorough and interesting manner and subsequently replied to further points raised by members. There have been

many expressions of welcome to the resumption of meetings of the London and District Society, but there is some difference of opinion as to the most convenient time for meetings in view of the competing claims of heavy professional work, Civil Defence, Home Guard and other duties. Nevertheless, it is hoped that all members will do their best to support personally further meetings which will be shortly announced and also, as far as possible, to encourage the attendance of other members who may be associated with them.

At a meeting of the Incorporated Accountants' Students' Society of London and District on December 9, Mr. Joseph Stephenson, O.B.E., F.S.A.A., read an informative paper on "Taxation of Farming Profits." The Students' Society had the advantage of Mr. Stephenson's wide experience in this increasingly important branch of professional work, and welcomed to the meeting Mr. C. Nevile, a Past President of the National Farmers' Union, Mr. W. J. Cumber, President of the Farmers' Club, and Mr. G. S. Browne, the Economic Adviser to the N.F.U. The paper was followed by a useful discussion, in which the visitors participated.

Post-War Licensing of Shops

In reply to questions in Parliament, Mr. Dalton has stated that the present arrangements for licensing shops, whether those selling food or those covered by the Location of Retail Businesses Order, will have to continue for some time during the post-war transition period. The system will be so operated as to facilitate the return to their former businesses of persons on the Board of Trade Register, with priority for ex-service men. In suitable cases, disabled persons selected by the two Departments concerned will also be granted licences, though the number of openings will be few so long as the present system of consumer rationing has to be maintained. Mr. Dalton affirmed that it is not the intention of the Government that these licensing arrangements shall be permanent, and in reply to a supplementary question amplified this by saying: "Every person who is on the register will be entitled to return to the same place and the same kind of business. Persons not on the register who desire to open a shop will be able to apply for a licence through the existing machinery, and these licences will, I anticipate, be given in larger numbers as the shortage of goods, which is the fundamental reason for the whole of this arrangement, abates." On the face of it, these arrangements should serve the purpose of protecting the livelihood of former retailers who have been called to national service, without the danger of turning retailing into a "closed shop."

Rent Control Committee

The Ministry of Health has announced the appointment of a committee under the chairmanship of Lord Ridley "to review the question of rent control, including the working of the Rent Restriction Acts, and to advise whether any, and if so what, changes are necessary." Evidence is invited from individuals and organisations in the United Kingdom. The whole question of rent restriction does, of course, raise some economic and social problems of first-class importance. While nobody would question that control of rents is indispensable on social grounds during a period of abnormal housing shortage, it is probable at the present time, for example, that the effective supply of accommodation is reduced because many people are maintaining two residences and keeping one of them unoccupied, largely on account of rent restrictions. This operates in two ways: on the one hand, there is the fear of losing control of the property indefinitely; on the other hand, the rent sacrificed is less than the economic rent and the cost of the procedure is therefore less. Again, it may be thought somewhat anomalous that certain types of property (such as industrial equities) should have their value greatly increased by the war-time monetary expansion, while that of others, such as real property, is rigidly pegged to a pre-war level of values which is now an anachronism. That may not matter a great deal; but what is much more important is the effect of rent restrictions in impeding the mobility of labour by tying families to particular premises, however unsuitable these may in course of time become to their changing requirements. From many points of view there would seem to be a good case for permitting a gradual and orderly adjustment of rents to take into account the war-time rise in basic costs and prices, which on this occasion will certainly not be reversed by a mistaken policy of deflation.

Petrol Allowances for Accountants

The necessity, in the national interest, to conserve supplies of petrol and rubber remains undiminished, and there are stringent limitations affecting those who use cars for professional purposes. The Ministry of Fuel and Power, however, have endeavoured to meet some exceptional difficulties which have arisen in regard to the conduct of the practices of professional accountants in rural areas. As a result of recent enquiries, we are informed that petrol allowances for practising accountants are assessed normally on the scale authorised for the professional or business use of private cars, and "S" coupons are appropriate. Where it is shown that a car is needed to cover professional journeys for the purpose of undertaking accountancy work for Government (or Local Government) Departments or for establishments directly connected with war production, allowances up to a higher maximum may be granted by means of "E" coupons at the discretion of the Regional Petroleum Officer. "E" coupons may also be issued where the Regional Petroleum Officer is satisfied that the services of an accountant to farmers cannot effectively be carried out without personal visits to farms, involving cross-country travel in rural areas. Category "E" is reserved for activities directly related to the war effort, and we understand that it cannot be accorded solely on the ground that an accountant is engaged to a substantial extent on taxation work.

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CAPITAL RECONSTRUCTION SCHEMES

The past few months have seen a not unimportant number of additions to the long list of capital reconstruction schemes which have been brought forward during the war period. It is a remarkable fact that only in rare instances has a need for reorganisation been imposed by the adverse influence of wartime circumstances. Mostly the element of urgency has been missing entirely; and the mainspring behind the presentation of a scheme has been the desirability of a re-ordering of the company's affairs actually suggested to the directors by wartime improvement in available profits.

Experience has shown that it is not a difficult matter to communicate to stockholders the board's sense of what is fitting. There may be criticism of the terms of a scheme; rarely is objection taken to its timing. Yet in theory this question of timing is all-important. Holders of prior charge issues who are asked to consent to a modification of their claims should, in present conditions, be able to say to themselves:—"The improvement in profits which is responsible for this scheme may well proceed further, especially if the burden of E.P.T. be mitigated. Moreover, if we wait a little longer before being paid our arrears of interest or dividend our net return may be increased through income tax being deducted, say, at only 7s. 6d. in the £ instead of at the present 10s. rate. There is no special advantage to us in a scheme at this time, and, therefore, no reason why we should make concessions."

In practice the argument is not so convincing. On the principle that "there's many a slip 'twixt cup and lip," a share which is currently in receipt of dividends is apt to be quoted on the Stock Exchange at a higher price than one whose recommendation it is that dividend arrears will commence to be cleared off at some unspecified time in the future. In other words certainty is preferred to uncertainty; and the appeal of a reconstruction scheme at any time is that it introduces certainty, or at least a greater measure of certainty, about future dividend payments.

If we go back for a moment to theory, it is quite clear that, where current profits or estimated future profits are sufficient to support dividend payments on a reconstructed capital, they should be sufficient to enable some progress being made with the clearance of dividend arrears, without reconstruction. Here again practice cuts against theory. When debenture interest is in arrear the debenture holders can put the bailiffs in. When it is preference dividend that is in arrear the preference shareholders merely become entitled to vote at meetings; and their collective vote is seldom, if ever, big enough to prevail against the collective vote of the equity shareholders. The latter are therefore able to dominate distribution policy, and, in effect, often tell the preference shareholders quite plainly that there will be no preference dividend until a scheme has been agreed. It is true that there can be no equity dividend, either; but a period of consolidation may actually improve the prospects for the equity—and "prospects" play a leading, sometimes the predominating, part in determining the market value of an equity investment. In a trial of patience the odds are, therefore, in favour of the equity shareholder.

It is possible to suggest *desiderata* which should be observed in dealing with preference dividend arrears; for instance, where funding certificates to the nominal value of the net amount of arrears are issued in full satisfaction of those arrears, care should be taken to ensure that the certificates carry an interest rate and sinking fund provisions generous enough to justify a price of par for the certificates in normal market conditions. If that would impose too heavy a burden on estimated future profits, then the preference shareholders might be conceded an adequate portion of the equity in return for the claims they are asked to forgo.

The temptation is to assume that preference holders will, in such circumstances, be entitled to the whole of the equity, since total estimated profits are less than sufficient to meet their claims in full. But there is always the chance that some turn in the trade tide, a shift in public fashion, a new invention, or some other factor may, after however long an interval, produce profits to meet these claims with something over. Existing equity holders are entitled to have their interest in the company maintained against that possibility; but how to measure the possibility, and how to induce the measurement to be accepted by equity holders who have a majority vote, are other matters.

The fact is that any *desiderata* such as those suggested above do not overcome this difficulty of voting rights. A possible solution might lie in providing that where new preference shares are issued these should, when their dividend has fallen, say, three years in arrears, be vested with votes sufficient to outweigh those of the equity shareholders. This would do much to restore the investors' confidence in preference shares, which have a positive risk-bearing *rôle* to play in the refined and complicated mechanism of modern commerce. It is natural that when subscribing to a new preference issue investors should not scrutinise the voting provisions too closely; were they to foresee breakers ahead they would not subscribe at all. Those responsible for determining the nature of the capital structure are more farseeing—witness the many instances in which inferiority in the nominal value of the equity capital is compensated by dividing this capital into shares of small denomination, and endowing each with a vote equal in power to that attaching to a preference share of much larger denomination.

"Capital Employed" and Government Price-Fixing

[CONTRIBUTED]

"Profit on Government contracts should be geared to capital employed in the business." This proposition is now practically a canon of belief in the Government Departments. It was not so, however, in the first year or two of World War II, despite the experience gained in price-fixing in World War I. Indeed, it was not until quite recently that the proposition took full hold in Government circles. In the great world outside it still has no more than a precarious place, for its validity is frequently held suspect by business men and by accountants.

Since Government practice increasingly relates profit to capital employed, while the business world nevertheless remains sceptical of the procedure, it seems high time that the proposition in question be discussed.

The Economic Aspect

Let us, in the first place, look at the economics of the question. The price-fixer wishes to determine how much profit should be allowed on a given amount of work performed by a business. He or some other Government official has presumably made decisions regarding the costs of the work involved, solving equitably—it is to be hoped—the numerous accounting and other problems that arise in cost determination. The profit which he is required to agree with the contractor is essentially something above and beyond costs of production. It might be suggested that it represents the return to business enterprise. But such a suggestion simply will not do. In fact, statements of this sort may be largely responsible for the confusion which has arisen over this whole issue. From the economic angle, profit is essentially the return on the capital resources immobilised and held at risk; only by ascribing the reward, not to those resources themselves, but to the enterprise which was responsible in sinking them in the business, can the statement that profits are the reward of enterprise be made to appear sensible. The essential point, however, is that all other elements of enterprise, including the drive and organising ability of the business man, are remunerated separately and not out of the profit. The return to all such elements should be included somewhere or other in the cost computation, as already agreed with the Government price-fixer. When, that is to say, he sets out to relate profit to capital employed, he is correctly carrying into practice the theoretical approach of the economist.

Pure Interest and Risk-Bearing

This return on capital consists of two parts, firstly, a pure interest return, and, secondly, a return for risk-bearing. There is little need to say anything about the pure interest portion except that while the purist in economics (unlike the professional cost accountant) would not include it in profit at all, but would treat it as a separate item of cost, nothing is lost by so including it, for this treatment makes it plain that the interest is a return which justly accrues to the proprietors of the business. Anyone who lays out resources will expect, failing the disappearance or partial destruction of his investment through unforeseen causes, to receive a return for the foregoing of consumption on his part which has increased the volume of capital resources available for future production. In practice, this part of the profit is usually put at 7½ per cent. Thus costed contracts, where no risk is borne, usually yield profits of this amount.

That part of the profit which represents the reward for risk-bearing should vary according to the degree of risk involved. It is, admittedly, not an easy matter to assess such risks, and the Government price-fixer is hard put to say how one business unit differs from the next in this regard. But within the limitations imposed by human fallibility, the thing can be done. Regard would normally be paid to two broad categories of hazards, namely, (*a*) the risk that the capital value of the resources will diminish and (*b*) the risk that their revenue-earning capacity will be impaired. Usually, though not always, factor (*b*) reacts upon factor (*a*) in such wise that the capital value of the assets is reduced by the discounted value of a fall in revenue-earning power, so that of the two factors it is, by and large, frequently sufficient to consider the second alone.

By whatever route the point is reached, and however difficult the passage, a rate of return on capital employed, sufficient to cover pure interest and the reward for risk-bearing, may be assumed finally to be determined. That much done, the price-fixer may, it would so far appear, sit back in his chair secure in the knowledge, for what it is worth, that he has acted in accordance with the best economic principles.

Turnover

But the business man and the accountant will not yet be convinced. In particular, they will point to cases where a very large turnover is based upon a relatively small capital and will ask, "Is it equitable in such cases that such a large turnover should secure such a small profit as is obtained by calculating on capital employed? Is this not putting a brake on efficiency? Is not the man who increases turnover out of relation to capital penalised if his capital determines his profit?" It should be noted that the querulous business man has already received a partial answer. Enterprise resulting in increased output or reduced costs will receive a return before the profit is fixed. Management salaries, which are the main cost element corresponding to enterprise, are put down as a cost in advance of the calculation of profit. It may certainly be a fact that in some cases there is reluctance on the part of the Government price-fixer to admit what the contractor considers a sufficiency under this head. But, where that is the case, the argument should not be allowed to wander from the province which is its logical home; the contractor's contention, in such cases, should be for an enlarged remuneration to the managers and not for an expanded profit on capital. If we are dealing with a public company, it is surely clear that the shareholders, to whom

the profit accrues, have shown no more enterprise in the business than is needed to affix their signature to a dividend warrant; the managers, on the other hand, may possibly have been working sixteen hours a day every day for the past four years. If we are dealing with a private business, we are faced with the difficulty that the proprietors may be the same people as the managers, but in any case of schizophrenia it is possible to deal with one of the personalities at a time. In other words, Mr. Smith *qua* proprietor of a business would enter into discussions with a Government official regarding the appropriate percentage to be allowed on his capital as profit. The same Mr. Smith *qua* manager of the same business would discuss, possibly with another Government official, the amount to be entered in his costs in respect of his managerial salary.

In practice, however, it is admitted by Government Departments that since it is commonly held by business men that an incentive is provided if the rate of return on capital increases with turnover, the pure logic of the case should be somewhat mitigated in the interests of increased production during the war. In consequence, if turnover increases out of relationship to capital, the profit return on capital is usually increased slightly, according to a scale that is drawn up to suit the particular case. The hope is that this typical British compromise between logical formality and business expediency has been enough to preserve a spur to increased output.

Determination of Capital Employed

Despite its use for purposes of the Excess Profits Duty during the last war and in other cases, the concept of capital employed remains somewhat unfamiliar to many. When difficulties in assessing capital employed in the business arise, it is usually helpful to bear in mind the fundamental economic approach indicated earlier. In other words, what it is desired to determine is the volume of resources immobilised in the business and held at risk in it by the proprietors. It follows immediately from this that on the side of liquid items, debtors must be included in capital employed, since the proprietors of the business have laid out resources in their own business for financing sales to customers who, for one reason or another, do not pay immediately. Contrariwise, creditor items must be deducted from capital employed, since the sum of outstanding credits received represents resources invested in some other business by a different set of proprietors. It also follows from this approach that investments must be excluded from capital employed, because, although they represent the resources of the proprietors, these resources are held immobilised and at risk in some other business.

The passage from these items to fixed assets brings us face to face with the problem of the valuation of such assets in capital employed. Practice has hallowed the obvious accounting approach, whereby the original cost of fixed assets is depreciated for wear and tear, the rates being, in the absence of any other mutually acceptable schedule, those employed by the Inland Revenue authorities. In ordinary times, there might be some argument, in theory at least, against using the written-down value of fixed assets for this purpose. In normal conditions, it might be said that the true measure of the resources invested in the business would be obtained by taking the replacement value of the fixed assets. But in time of war this argument loses its point. At such a time, in the first place, the assets could not be realised at replacement cost and, in the second place, it is doubtful whether they could be invested elsewhere in an industrial enterprise to give anything like a comparable yield. The only true valuation in such conditions is cost less depreciation, whether this is in excess of replacement value or not.

If a brief statement is needed, it may be said that the capital employed which the Government price-fixer has in mind should be roughly the same as the average capital employed of the Inspector of Taxes, with some adjustments largely made necessary by the fact that the price-fixer is strictly only concerned with resources immobilised in the business for purposes of production, while for Excess Profits Tax a rather wider view is appropriate. In practice, however, the two conceptions do not differ as much as this statement might suggest; and the E.P.T. method of calculating average capital employed will normally produce a figure acceptable to the Government official. This is subject to specific reservations on one or two particular points such as the exclusion of idle fixed assets and the rate of depreciation to be allowed on buildings, where Inland Revenue practice is no true guide to capital employed for the purposes of production.

The Trend of Savings

In the fourth year of the Savings campaign the final figures show small savings realised £741 million, against £628 million, and large savings £1,184 million, against £1,090 million. While this represents a combined increase on the year of £207 million, or 12 per cent., the result can hardly be adjudged satisfactory in view of the continued rise in the national income. Indeed, the extremely rapid increase in the note circulation itself measures a certain falling away in the small savings effort, whether the additional notes are intended for spending, as in recent weeks, or for hoarding. It may be noted that subscriptions to Defence Bonds, Savings Bonds and interest from loans were all lower on the year, while the new £1 Savings Certificate has brought in only £27·3 million, of which £20·4 million was subscribed during the first six months of the year. The increase in savings accounts remains the mainstay of small savings, and it is interesting to note that the deposits of the Trustee Savings Banks and of Government stocks held for depositors rose for the first time above £500 million in October. At the outbreak of the war the resources of these banks were less than £300 million. The Chancellor of the Exchequer has sent a letter congratulating the savings banks and their staffs on their achievement.

Three Years of Lend-Lease

[CONTRIBUTED]

In spite of repeated official statements and publications, from both sides of the Atlantic, on the working of Lend-Lease, some quite astonishing misconceptions are still to be found among people otherwise well-informed. One such person, for example, was recently heard to observe that Lend-Lease represented a definite loan, at a specific rate of interest, repayable in gold at a date to be fixed after the war. Ignorance as abysmal as this is surely inexcusable. But it is not surprising that some misunderstandings exist, for Lend-Lease, like other concepts born of total war, has evolved rapidly, in the forcing-house of democracy's supply machinery, through successive stages of growth.

It is instructive to trace this evolution. For roughly the first eighteen months of war, Britain's only means of obtaining the vital supplies which she needed from the United States was by the method of "commercial" purchase—on strictly "cash" terms. She financed these purchases, together with many capital projects and long-term contracts designed to *create* the specialised industrial capacity required, chiefly by drawing upon her accumulated dollar balances and upon reserves of assets—gold already owned by the Government, and international securities requisitioned from British nationals—which could be sold for dollars in the U.S. But after the fall of France the need for American supplies increased enormously. By the end of 1940, the bulk of Britain's readily mobilisable "dollar" resources had either been spent or was earmarked against future commitments already assumed; yet the demand for supplies of all kinds became ever larger and more pressing. In the comparable situation twenty-five years earlier, Britain had borrowed dollars. In 1940, however, recourse to such borrowing would have necessitated removal of the legal barriers erected by isolationist sentiment in the U.S. in the between-war phase. Moreover, it would have involved re-creation of precisely that entanglement of international financial war indebtedness which had had such disastrous consequences in the 'twenties, and might thus have wrecked in advance the possibility of a satisfactory peace.

The Inception of Lend-Lease

The genius of Roosevelt found a brilliant escape from this dilemma. When your neighbour's house is on fire, he declared in a historic speech just over three years ago, you do not offer to lend him money to buy your hose. You bring it out as quickly as possible, and attach it to his hydrant. When the fire is over, he returns it, after making good any damage it may have suffered. Thus arose Lend-Lease, a brilliantly simple device for "getting rid of the dollar sign." It was, in the words of *The Times*, "the first gleam of economic sanity in a world bedevilled by finance."

The Lend-Lease Bill itself, introduced in early January, 1941, and passed into law, after the fullest and freest debates, on March 11, 1941, further revealed the wise statesmanship of the President. It was not an "Aid to Britain" Bill, nor even, in the fire-hose sense, simply a "Lend-Lease" Bill. It was "An Act to Promote the Defense of the United States." Under it the President was authorised, in the interests of national defence, to procure and then "to sell, transfer title to, exchange, lease, lend, or otherwise dispose of" any "defense article" or "defense information" to the government of any country whose defence he deems vital to the defence of the United States. America thus recognised the Axis threat against her, nine months before it materialised at Pearl Harbour. She acknowledged that a blow struck against the Axis by Britain, or by any other country which thus became eligible for aid under the Act, was a blow struck also in defence of America.

This principle has played an increasingly important part in the subsequent evolution of Lend-Lease, and of the "Mutual Aid" system of which it forms a part, especially in relation to the "consideration" which is to be expected from the recipients of such aid. At the outset, however, very little was said on this matter. The Act simply provided that the terms and conditions of the receipt of aid

> shall be those which the President deems satisfactory, and the benefit to the United States may be payment or repayment in kind or property, *or any other direct or indirect benefit which the President deems satisfactory.*

Observe the great latitude permitted by the words we have italicised; and notice, too, the total exclusion of the dollar sign.

Nature and Extent

Equally wide were the powers governing the type of aid which could be rendered. "Defense articles" and "defense information," although broadly categorised in the Act, in fact meant any goods or services necessary for the waging of *total* war. As every household in this country has good reason to know, they were very far from limited to "warlike" articles or even to goods and appliances directly needed to produce such articles, but extended to many commodities required to sustain the health, efficiency and morale of the civilian population. The range of Lend-Lease aid has thus been very wide, extending from aircraft, tanks and guns to the construction of docks, supply bases and air ferry routes in or for theatres of war; from industrial equipment and raw materials to dried eggs and fruit juices.

Use of Lend-Lease articles, it may be noted, is subject to one important condition. Under the Act, a recipient Government must not transfer the supplies to a third party except with the consent of the Presi-

dent. To secure proper compliance with the spirit and intentions of Lend-Lease, and thus to justify Presidential " transfer " consent, the British Government is careful to ensure that such goods " are not in any case diverted to the furtherance of private interests." As explained in the White Paper of September, 1941, where the goods must pass to consumers through intermediaries, both the method of distribution and the remuneration therefor are controlled; wherever possible the distributors act as agents for the Government, not as principals; and opportunity for private speculative profit is " rigorously excluded." Similarly, special steps have been taken to ensure that Lend-Lease aid is not used, directly or indirectly, to enable British exporters to extend their trade (which in any case must be restricted to the irreducible minimum necessary for the war effort) at the expense of U.S. exporters.

The scale of Lend-Lease is controlled by Congress, which specifically votes the money which may be directly spent upon it and limits the proportion of other votes (such as those—or, more correctly, the " appropriations "—for the U.S. Service Departments) which may be diverted to it. By June last, the amount specifically voted had reached $24,683,629,000, while the authorised transfers of goods from other appropriations totalled no less than $35,970,000,000. These almost astronomical figures naturally do not measure the aid actually rendered, partly because the volume of contracts placed necessarily falls short of the authorised limits, partly because of the time required for production, but especially because the American budget, unlike ours, is not a cash budget of estimated outgoings but a budget of *commitments assumed* during the budgetary period—and long-term contracts may extend through two or more such periods. But the actual aid has been on a vast scale. Starting from a small trickle in 1941, Lend-Lease exports (which necessarily exclude the very extensive aid rendered in the form of services, especially shipping services, and also goods awaiting shipment) have risen rapidly, reaching an aggregate of $9,882 million by June, 1943. Of this total, $4,458 million went to the U.K., $2,444 million to Russia, $1,363 million to the African, Mediterranean and Middle East areas, and $1,133 million to China, India and the Eastern theatres. Of the U.K. share, rather less than 40 per cent. comprised munitions, one quarter consisted of goods for industry, while the balance was agricultural products and foodstuffs.

Mutual Aid

Since America's entry into the war, the principles underlying Lend-Lease have been both broadened and clarified, partly because the Allied effort, both economic and military, was quickly put on the basis of a pooling of resources for allocation according to need; and partly because the recipients of Lend-Lease aid had for the first time an opportunity to render substantial and specific material aid (as distinct from services such as provision of information on military experience and production methods) to the U.S. Britain now has already completed two-thirds of a £150 million programme of building airports, barracks, hospitals and depots for U.S. Forces in the U.K. She has also provided for these Forces transportation and a host of day-to-day services and supplies, extending from—

> " barbed wire to kitchen ranges; artillery and incendiary bombs to locomotives; parachutes to phone switchboards; concrete mixers to Nissen huts; Spitfires to soft drinks; anti-tank mines to underwear and socks."

Aid such as this, and much else, which cannot yet be measured, provided in theatres of war and on the high seas, is all rendered without payment and naturally ranks as " benefit " to the U.S. as an offset against Lend-Lease. But, precisely because such tangible set-offs could be cited, there seemed at one time a danger that the Mutual Aid system might degenerate into a process of material barter, and that accordingly the dollar sign might creep back. This danger seems to have been averted by the terms of the " Master " agreements—and especially by the construction which official U.S. statements have put upon those terms—which this country and most other recipients of Lend-Lease have respectively concluded with the U.S. Under its agreement, the U.K. undertakes to continue " to contribute to the defence of the U.S.A." and to provide such articles, etc., as it is in a position to supply. It is specifically recognised that such supplies will rank as " benefits " in the final settlement; but what is less obvious, though more important, is that a vital benefit (as Mr. E. R. Stettinius has officially explained) will be the continued defence of the U.S.—the incommensurable " benefit " from devoting British resources, effort and lives to the prosecution of the war. Moreover, the agreement provides a bulwark against repetition of the tragic disasters of the 'twenties. The final settlement, following the intentions of the Atlantic Charter, shall be " such as not to burden commerce between the two countries," and shall include agreed action to expand trade, employment and consumption and to reduce trade barriers. It should be noted, too, that the recipient Governments undertake to return, at the end of the emergency, such defence articles as have not been " destroyed, lost or consumed," and as are, in the President's judgment, useful to the U.S.

The nature of the eventual settlement cannot yet be foreseen. But it is significant that the President himself has declared that, in the interests of lasting peace, the whole costs of the war should be shared between the partners equally, in accordance with their ability to pay. Equality, on this conception, would be achieved if each nation devoted to the war the same fraction of its national income. A similar principle emerges from the eighth Lend-Lease Report to Congress. Lend-Lease and Lend-Lease in reverse, it is said, are " both parts of one process—the effective pooling of United Nations' resources for the fighting of the war. They are not a process of barter. They are the application in practice of a united war effort, in which each nation supplies, to the extent of its available resources, the needs of its partners." Evidently, the spirit of Mutual Aid rules out the methods of money reckonings of the past—what was once called, in a different age, " the tragic book-keeping of war."

Settling Prices for War Stores

By C. V. BEST, Incorporated Accountant

The Fourteenth Report for the Session 1942-43 of the Select Committee on National Expenditure, recently published, is an extremely interesting and informative document and is well worthy of careful study by members of the accountancy profession. Its subject is "War Production: Methods of Settling Prices for War Stores."

Scope of Enquiry

Bearing in mind the vast quantities of raw materials and stores of all kinds purchased by the three main Supply Ministries—Admiralty, Supply and Aircraft Production—and the detailed investigation necessary to cover so vast a range, it was not surprising that the Committee found it an almost impossible problem to ascertain whether the Government Departments were getting "good value for money." When judging this factor it was realised that price was not the only consideration but that it was also necessary to take into account that the maximum supplies must be available when and where required with the minimum of expenditure of national resources in materials, man-power and plant. The complexity of the subject will be appreciated when it is realised that while the Government decided to retain the existing commercial structure, as far as was possible in war conditions, and remain buyers from private industry, the normal methods of competition as a spur to efficiency and price control were absent. At the same time, to ensure adequate supplies it was necessary to obtain products from concerns unsuitably equipped for the purpose, with consequently high costs, while, on the other hand, others were able to increase their productive capacity to far in excess of normal peace-time requirements. To fix a fair price for all thus engaged, and to give a reasonable profit fairly related to the risks taken and the efficiency displayed, but at the same time to avoid undue profits, was stated to have been one of the great difficulties experienced by both the Government Departments and the private contractor.

Price Fixing Methods Applied to Contracts

The Committee reached the conclusion that in the absence of free competition no technique has yet been evolved which satisfactorily determines the "right price" to be paid for a particular article, although they stated that in normal conditions it would comprise :—

(i) Cost representing what cost ought to be with the maximum practicable efficiency; and
(ii) Profit margin so adjusted from time to time as to be adequate, and no more than adequate, to ensure the necessary financial strength of the industry concerned and to provide an incentive, not only to achieve the highest standard of efficiency which is immediately practicable, but also to strive constantly for increasing efficiency.

The varying types of contracts mainly used by the Supply Ministries have been as follows :—

(*a*) *Fixed or firm price contracts.* A fixed-price contract is arranged prior to or shortly after commencing production, and usually allows for variations in labour or material costs. A firm price contract does not allow for these variations and is, therefore, only available for short-term orders.

(*b*) *Maximum Price Contracts.* The manufacturer is paid his cost as ascertained by post-costing plus an agreed profit or percentage of profit, subject to an over-riding maximum price.

(*c*) *Cost-Plus Contracts.* Contracts where the total cost verified by post-costing, plus profit at an agreed percentage or a fixed figure, is paid.

(*d*) *Target Cost or Target Price Contracts.* A reasonable price is ascertained and the contractor is paid his cost as determined by post-costing together with the agreed rate of profit. The total price is then compared with the Target Price and the contractor is paid a percentage of the saving, provided such saving is due to his own efforts.

While appreciating the requirements for varying types of contracts to meet differing circumstances, and the fact that all departments had stressed their policy of using the fixed-price contract whenever possible, the Committee reported that this type of contract had not been utilised to the extent they considered desirable, or that the fixing of prices had been deferred to an unduly late stage in the execution of the contract. The adoption of the fixed-price contract is very strongly urged on the ground that it gives the contractor the necessary incentive to increase efficiency and reduce costs, with a consequent saving in materials and man-power. It is suggested that too much time and attention has been spent by the cost investigators on profit margins and on the allocation of overheads, to the detriment of consideration of economy in real costs. In making this remark the Committee state that they do not suggest that the question of profits is of little importance, but that efficiency and real economy in production are of greater importance. Obviously for a fixed-price contract the price must be a reasonably correct representation of the cost of efficient manufacture and a reasonable profit. To assess this figure the Committee recommends a more intelligent use of the statistics obtained during four years of war and by the application of technical cost estimation to a much greater extent.

A much bolder policy in fixing prices is advocated even though errors may sometimes arise therefrom. In making this recommendation attention is drawn to the fact that manufacturers generally are not, in present conditions, desirous of making unduly high profits, and that, taken as a whole, they wish to co-operate in the public interest.

It is indeed interesting to find that these conclusions, reached after such an exhaustive enquiry, coincide so exactly with what accountants and business men have been thinking for the past four years.

While admitting the Treasury's arguments that excess profits tax affords no justification for looseness

in profit margins, the Committee draws attention to the fact that if the bolder policy in price fixing advocated allows certain loopholes for private gain, excess profits tax as at present levied affords a substantial safeguard in this respect.

In cases where a fixed price is impossible, *i.e.*, in repair and experimental contracts, it is recommended that post-costing should be carried out as soon as possible after the execution of the contract.

Raw Material Controls

The controls set up for the purpose of obtaining and regulating supplies of raw materials or products, for both Government and civilian use, are operated mainly by the Ministry of Supply under thirty distinct controls, leaving the Light Metal Control under the supervision of the Ministry of Aircraft Production. The prices of controlled materials are generally fixed by Order and this applies to both Government and other purchasers. These prices are determined in most cases by some criterion other than the actual or estimated cost of an individual producer. As is essential when covering so wide a range, the methods adopted have been numerous, although there is the common feature to nearly all the control plans that by one means or another the low-cost producer subsidises the concern which could not manufacture profitably at the controlled price. The controlled prices have been settled in some cases by adding to the pre-war price ascertained increases in cost (heavy steel industry); in others by the current cost ascertained from a cross-section of the industry (iron and steel fringe products); and in others to give a fixed percentage return on the capital employed in the industry (leather control).

The Committee appreciated the complexity of the problem and the necessity for certain elasticity in the arrangements. They strongly advocate that while retaining this elasticity, standard prices should be fixed for standard products, as is recommended in the case of contracts. Difficulty is anticipated in the existing complex methods, and it is suggested that the position should be kept constantly under review by some body with knowledge of the Government position as a whole and with power to evolve clear principles and methods which are, as far as possible, uniform and effective.

Future Consideration

Further uniformity and clarity in the present departmental methods is thought possible. It is suggested that a special committee be appointed to undertake a stocktaking review of the results as illustrated by four years' practical experience of war conditions. This Committee should represent both the Government and private business and should include men with practical experience in production methods and cost accounting, including independent accountants. Their review should include consideration of methods of cost accounting and of the collating and recording of the details obtained in order to ascertain true cost. Profit should then be considered, and methods of devising the fairest and most effective form of efficiency bonus—bearing in mind the great advantage of fixing standard selling prices for a range of products where there are considerable variations in the production costs of individual producers.

In view of the economic difficulties which will arise after the war, the solution of the correct cost and a reaonably adequate profit margin to ensure the financial strength of industry and to provide the necessary incentive for increasing efficiency will prove to be a problem of paramount importance to the entire community.

E.P.T. Problems*

By H. HEATHCOTE-WILLIAMS, M.A., Barrister-at-Law

The term " excess profit " denotes that there must be some standard of profit, by comparison with which the actual profit made is in excess. The Finance (No. 2) Act, 1939, provides for three possible standards, and the 1940 Act for a fourth. These are: (1) the profit of a standard period; (2) a statutory percentage of the average capital employed in the business in the chargeable accounting period; (3) the minimum standard; (4) the substituted standard.

The Profits Standard

1. Where the trade or business was commenced on or before July 1, 1936, the standard profits are ascertained by reference to the profits of a standard period (Finance (No. 2) Act, 1939, Section 13 (3)). The percentage standard is not permissible; but there is a range of choice of alternative standard periods.

(*a*) For businesses commenced on or before January 1, 1935, the choice can be 1935, or 1936, or 1935 plus 1937, or 1936 plus 1937 (Finance (No. 2) Act, 1939, Section 13 (4)). Where the standard period is two years, the standard profit will be half the amount of the total profits of those two years.

These years are calendar years. Where the close of the accounting year does not coincide with the close of the calendar year, December 31, an apportionment will be necessary (Finance (No. 2) Act, 1939, Section 14 (1), and proviso thereto). Furthermore, where the average amount of capital employed in the business in any chargeable accounting period varies from the average amount in the standard period, there must be a consequent adjustment of the standard profits. The adjustment is not exactly in proportion to the variation in the amount of capital employed, but according to a statutory percentage. (Finance (No. 2) Act, 1939, Section 13 (3) proviso.)

(*b*) If the trade or business was commenced after January 1, 1935, but on or before January 1, 1936,

* Summary of a lecture delivered before the Incorporated Accountants' Students' Society of London and District.

the standard period can be either 1936 or 1936 plus 1937. The standard profit is calculated in the same manner as in (*a*).

(*c*) If the business commenced after January 1, 1936, but on or before July 1, 1936, the standard period must be twelve consecutive months ending not later than June 30, 1937. There is no reference here to a calendar year, but there must still be an adjustment where there is a variation in the average amount of capital employed.

In any of these three cases, (*a*), (*b*) or (*c*), there appears to be nothing against making a different choice in respect of a different chargeable accounting period. It is as well to bear this in mind, for it is just possible that where there are adjustments to be made on account of variations in the capital employed, the change of choice of standard might prove advantageous.

The proviso to Finance (No. 2) Act, 1939, Section 13 (3) governs the position where the amount of capital employed in the business in the chargeable accounting period differs from the amount employed in the standard period. Its effect is that the standard profits are increased or decreased, as the case may be, not in a precise ratio to the increase or decrease in average capital employed, but in accordance with the statutory percentage on the increase or decrease.

The Statutory Percentage

2. Where the business was commenced after July 1, 1936, the standard profits are the statutory percentage of the average amount of capital employed in the business during the relevant chargeable accounting period. (Finance (No. 2) Act, 1939, Section 13 (8).)

What is this statutory percentage? By Finance (No. 2) Act, 1939, Section 13 (9), as amended by Finance Act, 1940, Section 31 (2), where the business is carried on by a body corporate (except in a case of a company where the directors have a controlling interest), the statutory percentage is 8 per cent. Where the business is carried on by an individual, or a firm, or a company in which the directors have a controlling interest, the statutory percentage is 10 per cent. In the special case of a partnership where one of the partners is a company in which the directors have not a controlling interest, the statutory percentage of the firm is 8 per cent. on the company's share and 10 per cent. on the remaining share.

The meaning of a "controlling interest" has already been judicially construed. It seems clear that the directors have not a controlling interest merely by reason of the fact that they manage and direct the business. Rowlatt, J., said in *B. W. Noble, Ltd.* v. *C.I.R.* (1926, 12 T.C. 911) that a controlling interest means a shareholding which is more powerful than all other shareholdings put together in general meeting. This view was upheld in *B.A.T. and F. A. Clark* (H.L. (1942), 21 T.C. 353).

Finance Act, 1941, Section 40, provides that no body corporate shall be treated as a director unless it is itself a company whose directors have a controlling interest.

The Minimum Standard

3. A standard profit based on the minimum standard can be chosen instead of the profit standard or the percentage standard, irrespective of the date of the commencement of the business. Because the minimum standard has been chosen for one chargeable accounting period, it does not follow as a matter of course that it will be applicable to another chargeable accounting period. The choice has to be made afresh each time, and if it is not made, another standard will operate.

Finance (No. 2) Act, 1939, Section 13, as substituted by Finance Act, 1940, Section 31 (1), provides that the minimum standard is £1,000 in all cases, except for a business carried on by an individual or a partnership, or a company whose directors have a controlling interest. In these cases it is £1,500 for each working proprietor, but not more than a total of £6,000, which may be increased at the discretion of the Commissioners in certain circumstances by £1,000 for each working proprietor, but so as to make not more than a total of £10,000.

A working proprietor means a proprietor who has, during more than half of the chargeable accounting period, worked full time in the actual management or conduct of the business. It is not sufficient to say for this purpose that his services are indispensable (see 21 A.T.C., p. 21 (*b*)). A proprietor in a partnership business means a partner owning more than 5 per cent. of the capital. It means in a company, a director owning more than 5 per cent. of the share capital, without regard to the nature of the shares, ordinary or preference. In view of the fact that the working proprietor, in order to qualify, must work full time for more than half the accounting period, it is difficult to see how he could qualify in respect of two businesses.

The Substituted Standard

4. The substituted standard only applies to businesses commenced before July 1, 1936. It applies to individuals and partnerships, as well as companies. The only distinction is that, where 6 per cent. is mentioned in the case of ordinary companies, you must read 8 per cent. in the case of individuals, partnerships, and companies where directors have a controlling interest.

It became quite clear that in some cases to take the profit of the pre-war period as a standard profit operated very unfairly. As a result, Finance Act, 1940, Section 27, was passed to remedy the hardship. Sub-section (2), as amended by Finance Act, 1941, Section 29 (3), provides for cases where the Commissioners are satisfied that profits in a standard period were either nil or so low as to be unfair for the purpose of a standard. The Commissioners have a discretion to fix the standard profit, provided it does not exceed 6 per cent. interest for the standard period on the paid-up ordinary share capital of the company, plus the fixed rate payable on any other paid-up share capital.

Further provision still is made in certain circumstances for an increase in the standard profit where the condition of nil or unduly low profit exists. If, on an application, the Commissioners are satisfied

that the paid-up share capital in the standard period did not fully represent the net value of the assets employed in that period, they may in their discretion increase the standard to a limit of 6 per cent. of the value of those assets computed on the basis specified in Finance Act, 1940, Section 27 (3) proviso, as amended by Finance Act, 1941, Section 29 (3).

In the case of pre-war depressed industries, the Commissioners, by virtue of Finance Act, 1940, Section 27 (4), as amended by Finance Act, 1941, Section 29 (3) and Section 32 (1), are not bound by the limitation imposed by the proviso to Section 27 (3) of the 1940 Act. There is, however, a limit imposed by Finance Act, 1940, Section 27 (5), as amended by Finance Act, 1941, Section 32 (1), whereby the new standard must not exceed 6 per cent. (8 per cent. in the case of individuals, etc., as before) of the average capital employed in the standard period, computed in accordance with the statutory provisions, but reduced by the amount of the capital which the Commissioners decide had, before the commencement of the standard period, been permanently lost. The limits can be further increased where the average rate of interest actually payable on borrowed money, plus 2 per cent., is greater than the rate applicable under the Finance Act, 1940, Section 27. The limits can also be increased by Finance Act, 1941, Section 30 (2), where a net loss has been sustained in the building up of a business.

There are difficulties to-day, in seeking to obtain a substituted standard, because by Finance Act, 1940, Section 27 (7), as substituted by Finance Act, 1941, Section 32 (2), no application for a substituted standard can be made after March 31, 1942, unless the Commissioners grant an extension of time.

TAXATION

Procedure at Appeals Before the Commissioners

Pursuing our policy of bearing the young member of the profession in mind, it may not be out of place to describe briefly the procedure at appeals. Most accountants in due course obtain considerable experience in this direction, but the first appearance is always a strain, particularly if there has been no opportunity of attending as a spectator with an experienced principal or other able exponent.

While the procedure follows that of the Courts, it is much more informal, and the Commissioners are always sympathetic and helpful to those who are obviously "raw" but making a reasonable effort. Broadly, the procedure is this :

(*a*) Open the case by giving the facts leading up to the appeal, and the details of the appeal, and only then give the arguments in favour of the appellant. It is vital to remember that the Commissioners know nothing whatever about the appellant's affairs or the appeal, and every relevant fact must be given, without bias.

In giving the arguments, it is wise to admit anything on the other side, e.g. cases decided against the contentions of the appellant should be quoted, distinguishing then as far as possible from the case in point, as well as those for it.

(*b*) Call any necessary witnesses and "examine" them. Leading questions are not usually objected to before the Commissioners.

The Crown's representative has the right to cross-examine, following which the appellant's representative can "re-examine" the witness in the endeavour to right any wrong impression that may have been made or to obtain a correction of any statement of facts which appears to have been wrongly given by the witness.

(*c*) The Crown representative then makes his reply, and calls any witnesses, who are examined, cross-examined and re-examined as may be required. The appellant's representative can rarely prepare much of his cross-examination in advance, and he should make careful notes throughout the case to enable him to make the most of it.

(*d*) Finally, the appellant's representative replies, summing up his case and doing his best to overcome the Crown's arguments.

(*e*) The Commissioners may then decide at once, or may ask all parties to retire while they consider their decision, or may defer a decision, to be given later in writing. If the parties have to retire, the Crown's representative must go out with the rest.

(*f*) If it is desired to keep the question of an unfavourable decision open for an appeal to the Courts, express dissatisfaction immediately, otherwise such an appeal cannot be made.

Experience shows that the most successful tactics at appeals are as follows :

1. Speak slowly, clearly and concisely, in simple sentences, in a friendly voice.
2. State your case as if explaining the facts to a fellow-accountant who knows nothing about it.
3. Have several copies ready of any document that the Commissioners must see, e.g. accounts, ready to hand to the chairman as you refer to it. If you produce any document of which the Revenue have no copy, have one ready for them as well. Remember that the Commissioners cannot possibly grasp the documents at a glance, and draw their attention to the relevant contents, giving them time to study them. In "big" cases, it pays to go to see the Solicitor of Inland Revenue before the day of the hearing, and agree on the documents and as many of the facts as possible. Much time is then saved on the day.
4. Never "colour" facts ; state them impartially.
5. When you come to argue on the construction to be placed on the facts, show your confidence in your arguments ; at this point you become an advocate. But avoid labouring a point. Moreover, if you see that a fact is obviously against you, admit it frankly and turn to facts with an opposite interpretation.
6. Go easy with witnesses. If an answer is not what you want, reframe the question so that the witness can correct his error. It is not your job to argue with witnesses, but to extract the truth from them. It is unusual to require evidence on oath, but the Commissioners will soon arrive at their conclusion as to the reliability of a witness. It is not infrequently the case that the Commissioners have

to decide on the credibility of the appellant as the main evidence. It is well to prepare in advance a proof of the evidence that your own witnesses will give, so that you can study it and frame your case accordingly.

7. Never let yourself get "rattled" because things are going against you. That is the time to let your natural humour come to your rescue. Remember you are taking the case to do your best for your client with the facts available. The writer recently took a case which he regarded as hopeless, having told his client so; and so it proved, but when the decision was given, both his client and the Crown solicitor congratulated him on the way he took it. That is as it should be; accept your losses as cheerfully as gains. You will not always win.
8. Be patient; do not interrupt the Crown case. Your turn will come to deal with it, so note down the points you want to answer. Above all, if the Commissioners ask questions, or start discussing among themselves, wait till they are finished before you go on.

Finally, take every opportunity that presents itself to attend appeals, so as to see others at work. A lot can be learned from studying counsel on appeals; they are usually models of procedure. The care with which they prepare their case should be noted; many cases are won—or lost—before the appeal is heard by the preliminary study and preparation—or the lack of it.

Taxation Notes

Contributions

We thank those readers who have responded to our occasional requests for notes of concessions and other items of interest. While all those received are not necessarily suitable for publication, many have been accepted. The continuance of this assistance to the profession in general cannot but be of value, and we hope that even more will be received in future. In particular, we would like our readers' experience for E.P.T. purposes of fees paid to professional men who are also directors, being omitted from directors' renumeration.

E.P.T.—Working Proprietor Standard

The concession whereby, in taking into account the size of the business, the working proprietor standard is increased by 6 per cent. on the average capital employed in the chargeable accounting period in excess of £5,000 per working proprietor, appears to be well known. It does not yet appear to be generally realised, however, that one-third of borrowed money can be included in the capital employed for this purpose, in respect of chargeable accounting periods falling after March 31, 1940, without disturbing the deduction from profits of the interest on borrowed money.

Estate Duty—Gifts made in Consideration of Marriage

Although gifts *inter vivos*, made within three years of the death of the donor, are liable to estate duty, there are certain exceptions, of which a very important one is a gift made in consideration of marriage. This exception is treated as including gifts made in contemplation of a marriage to a person other than the donor, as well as to gifts made by the donor in consideration of his own marriage. Moreover, estate duty is not payable on a sum covenanted in a marriage settlement to be paid on the covenantor's death, if in fact satisfied before that event, or on the satisfaction in consideration of marriage of such a covenant not originally made in consideration of marriage. The exemption does not apply to estate duty payable under Section 43, Finance Act, 1940, e.g. where a life interest in property is surrendered on the marriage of the reversioner.

Legacies to Executors

An executor is frequently left a legacy provided he proves the will and acts as trustee. In such a case, the legacy is a contingent one, but as soon as the executor has satisfied the contingency, he becomes entitled to the legacy, and is liable to legacy duty without any deduction for services. The executor is entitled to no recompense for his services, unless the will so provides. Many wills, however, provide that a professional man acting as executor shall be allowed to charge his usual fees for such work. Strictly speaking, such fees are liable to legacy duty, though the practice is not to levy it except where a fixed annual sum is given to the trustee for managing the estate, in which case the trustee must render periodical legacy duty accounts and pay the legacy duty. No duty is charged on the fees of trust corporations.

For income tax purposes, an annual sum paid to a trustee as renumeration is an annual payment within the meaning of General Rules 19 and 21 and taxable by deduction, whereas fees properly charged by a solicitor or other professional man entitled under the will to charge for his services as trustee, although paid out of profits brought into charge to tax by the trust, must be included in his earnings for assessment under Case II. That is so even if the professional man in question is himself a beneficiary and so bearing part of the fees himself (*Cf. Baxendale* v. *Murphy*, 9 T.C. 76; *Jones* v. *Wright*, 13 T.C. 221; *Watson* v. *Everitt* v. *Blunder*, 18 T.C. 402).

Life Assurance Commission

In the case of a taxpayer who receives commission on his, or his wife's, Life Assurance premiums, the Inland Revenue will allow by way of deduction the appropriate commission from each premium in arriving at the premium on which relief is given, instead of assessing the commission as a separate source of income. The commission is deducted from the premium before applying the restrictive limits of 75 per cent. of the capital sum, or one-sixth of the statutory income.

Dominion and Foreign War Damage Schemes

In August, 1940, it was provided by Section 12 of the Finance (No. 2) Act, 1940, that in computing the amount of the profits or gains of any person for any purpose of the Income Tax Acts for 1940/41 and subsequent years there shall not be deducted any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of that war damage. Exceptions are so much of any payment as is properly attributable to matters other than the right or eligibility mentioned and any payment under (i) any policy of insurance issued under Part II of the War Risks Insurance Act 1939, or any similar enactment in force in any country outside the United Kingdom; or (ii) any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit. This section was applied to Excess Profits Tax and

National Defence Contribution by Section 15 and was effective in each case from April 1, 1939.

In March, 1941, was passed the War Damage Act, 1941, which under Part I provided for contributions and for compensation in respect of war damage to buildings and other immovable property and under Part II set up two insurance schemes, the business scheme and the private chattels scheme, whereby the Board of Trade undertook the liability of insuring against war damage to goods in consideration of certain premiums. Section 84, now Section 113 of the consolidating measure, the War Damage Act, 1943, enacts, *inter alia*, that no sum shall be deducted in computing the amount of profit or gains of any person for any purpose of the Income Tax Acts or the profits of any person for the purposes of the National Defence Contribution or for the purpose of Excess Profits Tax in respect of (i) any payment under Part I of the Act; or (ii) any premium payable under a policy issued under either of the schemes operated under Part II of the Act.

What is the position regarding dominion and foreign war damage schemes? It might at first be thought that the very wide phrase "any contract or arrangement" used in Section 12, Finance (No. 2) Act, 1940, is sufficient to prohibit any deduction. Where such schemes are compulsory, however, it is thought that payments thereunder could not be said to be under a contract and it is questionable whether they are under an arrangement. It will be noted that in the case of the United Kingdom schemes, which are mainly compulsory, it was apparently considered necessary to provide for the disallowance of payments by Section 84 notwithstanding that Section 12 had been in force for some months; and this might be held to imply that "contract or arrangement" did not cover compulsory schemes. Moreover, what is the position where a dominion or foreign scheme relates both to land and buildings and also to trading stock? War Risk Insurance of the latter in the United Kingdom is covered by the War Risks Insurance Act, 1939, premiums under which are allowable as deductions for the purposes of United Kingdom Income Tax, National Defence Contribution and Excess Profits Tax and under proviso (b)i to Sub-section 3 of Section 12 Finance (No. 2) Act, 1940, this allowance is extended to any payment made under any policy of insurance issued under any enactment similar to Part II of the War Risks Insurance Act, 1939, in force in any country outside the United Kingdom. Is the total payment in respect of land, buildings and trading stock apportionable and, if so, is the payment in respect of trading stock under the dominion or foreign scheme only allowable if it is a premium under an insurance policy? Or is the total payment allowable because the scheme is not a "contract or arrangement"?

Until some authoritative ruling is obtained it would appear prudent to reserve the question in any cases in which the point arises, which would be those of concerns trading abroad but controlled from and assessed in the United Kingdom.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

Schedule D—Trade—Deductions in arriving at profits—Land development business—Loan—Interest payable, also premium on repayment—Whether premium paid admissible deduction.

In *Bridgewater Bros.* v. *King* (K.B.D., July 14, 1943, T.R. 263), the capital of the loans was repayable by instalments as the developed building sites were sold, and it was provided that a premium of £6,500 should be paid in addition to interest. Actually, the loan was repaid earlier and £4,000 was paid in lieu of £6,500. The Special Commissioners had held that the deduction of this sum was prohibited by Rule 3 (*f*) to Cases I and II of Schedule D, i.e. that it was a payment of capital. Macnaghten, J., affirmed their decision as one of fact, *European Investment Trust Co.* v. *Jackson* (1932, 18 T.C. 1), *Ascot Gas Water Heaters* v. *Duff* (1942, 24 T.C. 171), and said that there was ample evidence to justify it.

These cases are the counterparts of those where, as in the recent one of *Lomax* v. *Peter Dixon & Sons, Ltd.*, noted in our issues for June and October, 1943, the question was whether the premiums paid constituted taxable income of the recipients.

Tax-free payment—Annual payment of £1,574 out of life interest—Mortgaged for £9,615 with supporting life policies for £12,000—Assignment in 1935 of £480 of annual payment in consideration of (a) *loan of £12,000,* (b) *assignment of the said life policies,* (c) *such further payment out of the £1,574 as would produce £420 net after deducting tax, being the premiums on the said policies—Whether the provision for paying £420 net caught by Section 25 of F.A., 1941.*

Pyke v. *Peters* (K.B.D., December 11, 1942 (1943), T.R. 333), was a case which again shows that in the attempt to make more equal the additional burden of war taxation by the enactment of Section 25 of F.A., 1941, serious inequity was created in certain classes of case. Upon the facts as stated in the heading, it will be clear that as the borrower had only a life interest, and it was the intention of the contract that the cost of providing for the repayment of the sum lent should fall upon him, and that he should pay to the lenders each year the amount of the premiums necessary to maintain the re-imbursing policies until they matured on the cessation of his life interest, there was no case in equity for the lenders to be penalised whatever the level of income taxation. It was contended for the lenders that the provision for the payment of the net amount of the premiums was not a "provision" within Section 25, but an out-and-out assignment of income to which it did not apply. Failing this rectification of the agreement was claimed. A further contention was based upon the Law of Property Act, 1925, Sections 114, 115, to the effect that the lender, the defendant, as transferee of the original mortgage, succeeded to the benefit arising out of the personal covenant of the borrower to pay the full amount of the premiums.

Asquith, J., rejected all three contentions. As regards the application of Section 25, he took "the prudent and commonsense view that one who assigns a part of his income is making provision for the payment of that income to another person." As to rectification, he had no doubt that the assignment had not operated according to the common intention of the parties. To support rectification it was necessary to show that the assignment did not carry out that common intention. The failure, however, was not due to this but to supervening legislation which had "driven a coach and six" through both the intention and the instrument itself. As to the third contention, he held upon the facts that the defendants had not succeeded to the benefit of the personal covenant contained in the original mortgage.

Publications

Uniform System of Accounts for Gas Utilities. (National Association of Railroad and Utilities Commissioners, New York.)

At the time when the Incorporated Accountants' Research Committee is investigating the question of uniformity of accounts, it is interesting to note that in 1937 there was published in America a "Uniform System of Accounts for Gas Utilities." It was prepared and submitted by the Committee on Statistics and Accounts of Public Utility Companies of the National Association of Railroad and Utility Commissioners at its 1936 Annual Convention. The Convention, believing that uniformity in utility accounting was desirable in the public interest, resolved that the form of accounts submitted by the Committee be adopted by the representatives of the Association's members "with such modifications only as they may deem necessary in the public interest." Although there is space in the booklet for extracts from the law prescribing the system and the penalties for non-compliance therewith, there does not appear to be any evidence of actual compulsion.

After definitions of thirty-seven words and phrases used later, there are General Instructions which provide *inter alia* for the following:

1. The division of undertakings into two classes according to gas revenue or cost of plant, the smaller ones being at liberty to dispense with certain revenue expenditure accounts.
2. No destruction of books or records without permission.
3. Books to be kept on monthly basis and closed at the end of each calendar year.
4. Sub-division of specified accounts allowed but integrity of these accounts and their numbers must be preserved.
5. Questions of doubtful interpretation to be submitted to the Commission for decision.

The final accounts are then considered under the sections shown below, and each item has three subheadings entitled: (*a*) instructions, (*b*) schedule of accounts, and (*c*) text of accounts.

The first section is the Balance Sheet. The second section, termed "Utility Plant," deals with land, buildings, plant, mains, meters, etc., and is in fact a detailed amplification of one of the items listed under the heading of "Balance Sheet."

The succeeding sections are:

Earned Surplus Account, which is the Appropriation Account.

Income Account—almost equivalent to the Profit and Loss Account, and includes the next two sections.

Operating Revenue Accounts.—The credit side of the Revenue Account, but no provision for credits from products.

Operating Expense Account, "to show in detail the cost (except depreciation, depletion, amortization, certain property losses and taxes) of furnishing gas utility service." This also includes debits and credits in respect of products.

Clearing Account.—Overheads or indirect charges "cleared" by transfer of appropriate proportion to other accounts included in previous sections.

It can be said that the whole system is comprehensive and the instructions precise and numerous, and it would appear that the users would have to be very well acquainted with the contents of this book, to ensure the fulfilment of its purpose.

Machine Accounting. By O. Sutton, M.I.S.M.A., A.C.I.S. (Macdonald & Evans, London. Price 25s. net.)

This is a very interesting book and, as the author says, breaks comparatively new ground. Indeed, the fact that it follows so soon after Miss Cadigan's "Management Mechanised Accounting" indicates the renewed interest in accounting by machine, and forecasts the interest which will be taken in the subject in the post-war world.

The present book begins with the evolution of the machines and a discussion on the training of operators, proceeding then to the basic principles of machine application, and later to a description of available machines, from the simple adding machines to those which use punched cards. It includes three considerable chapters on stock records, pay roll and time attendance records and costings, which would have been equally in place in a book on accounting generally.

One of the early chapters is devoted to the presumed necessity for appeasing the "external auditor, who periodically certifies the accuracy of the internal accounting work." Some accountants, we are told, fear the coming of the machine, thinking that it "would re-act unfavourably on their earning capacity." They are assured that "machine methods do not alter the generally accepted accounting principles, neither do they reduce in the slightest the necessity for the external auditor's specialised knowledge and experience, or diminish his status." Nevertheless, the author commends "ledgerless accounting" with an "unpaid" file, consisting of duplicates of originating documents, treated as a Suspense Account and representing the record of the outstanding debts. The experienced auditor will be more impressed than is the author by the difficulties of such a system from the point of view of credit control, or of the valuation of debts, and will wonder whether the author really visualises the complications that arise in connection with payments on account. Perhaps, also, the auditor's experience will lead him to remember cases of the use of this system in the relatively simple matter of rate collections when the slips regarding individual rates payable have been removed from the drawer and taken to the public counter for the convenience of the public and somehow have not returned to the appropriate drawer, with disastrous results at balancing time. In a later chapter the author raises the question whether separate columns for debit and credit are really necessary, and recommends the use of a single column with additions and subtractions, especially where the progressive balancing methods are employed. Indeed, he wonders why the dual column method has persisted so long. In this, as in the discussion of the details of the machine construction, we seem to trace the mind of the engineer and machine specialist rather than that of the practical accountant.

The book will be a valuable addition to the library of the professional accountant, and as a first essay in the development of the subject, it merits praise and will repay the closest consideration. If, in the foregoing comments, we have called attention to some of the debatable points which seem to be treated in a jaunty and easy-going fashion, it is to emphasise that the value of the pioneer work done makes the author's reference to these matters of considerable importance, and to suggest that in subsequent editions, which we assume will be called for, he should confer with accountants of experience in regard to their side of the matters in hand.

FINANCE

The Month in the City

Brazilian Debt Scheme

The long-awaited Brazilian debt scheme has turned out to consist of two alternative plans. As a result of the insistence of the Council of Foreign Bondholders that capital rights should not be injured, Plan A maintains the original nominal value of the bonds, and establishes new rates for interest and redemption. Plan B reduces the capital value of all bonds in Grades 1 to 3 to £80 per cent. and the remainder to £50 per cent., with the exception of Grade 8 which are to be redeemed outright. It provides compensation in the form of varying cash payments, fixes a uniform 3½ per cent. interest rate for all bonds, and establishes new redemption rates. Bondholders have until the end of next year to decide which option they will choose. The whole scheme is so complicated that it has been difficult to see the wood for the trees. In the market people have been too immersed in detailed calculations of relative values to give thorough attention to the principles involved in the settlement. These principles, however, and the method of imposing them, must be regarded as thoroughly unsatisfactory. The scheme makes partial default permanent, and is the result of a unilateral decision. Brazil indicated just what sort of a plan she was prepared to accept and how much money she was prepared to devote to it. These were not subjects of agreement between debtor and creditors. The scheme perpetuates all the anomalies of the Aranha plan, and it is clear that many of its unsatisfactory features have been due to the conflict of interest between the representatives of American and British bondholders, and, of course, to the lack of official support in such a vital national interest as the maintenance of overseas investments. It has been argued in some quarters that Brazil's wartime prosperity makes this a particularly opportune time to negotiate a permanent settlement on somewhat better terms than its predecessor, and that in normal circumstances Brazil would never be able to meet the full service of the debt. It may be doubted, however, whether anyone is competent to pronounce so dogmatic a judgment on Brazil's future, and the admittedly abnormal conditions of war are not the time for making permanent decisions. In the absence of full service some temporary scheme should have been devised, relating interest and redemption payments to Brazil's available exchange resources.

Value of Bonds

The process of adjusting bond values to the terms of the scheme has produced some very sharp fluctuations, but most of the loans now seem to be settling down around a 7 per cent. to 8 per cent. yield basis. There is little doubt that most bondholders will choose Plan B, with its immediate cash payments of £23 million and its higher amortisation provisions. There are, however, exceptions in the case of bonds of small outstanding amount and high amortisation rate. With the prospect of retirement within the next few years, there is an obvious advantage in maintaining the capital value under Plan A and gaining a high redemption yield. The outstanding example has been the Lloyd Brasiliero loan, whose redemption yield has justified a doubling of the price. The calculation of yields under the two plans has presented some formidable problems which should be of interest to the accountant and actuary. The main difficulty has been to reconcile the official amortisation rates with the Brazilian Finance Minister's statement that the whole of the external debt will be retired by 23 years. Over the loans as a whole it is arithmetically possible to effect this reconciliation, for it is evident that on the retirement of one loan its sinking fund is applied elsewhere, thus increasing the rate of amortisation on the others. From the practical point of view, however, of calculating individual redemption yields there is the insuperable difficulty of deciding *which* loan will benefit from the sinking fund of another which has been redeemed. A considerable number of market firms have attempted redemption yield calculations, and they have varied between those who have assumed the 23 year maximum life and made their arithmetic comply, and those who have stuck to the official amortisation figures and produced maximum lives of up to 200 years. The first assumption may be the more realistic, but it involves approximate calculations. The second may be mathematically sound within its limits, but produces fantastic lives for the longer-dated bonds.

Private Placings

Increasing concern has been expressed recently about the volume of share transactions which are being conducted through other than Stock Exchange channels. These private placings have commonly been the result of Treasury refusal to sanction "permission to deal." Suppose, for instance, that a man wishes to liquidate a large holding of shares for which permission to deal has never been sought. If it is impossible to obtain Treasury sanction now, there is nothing to prevent him from placing these shares outside the Stock Exchange. The lack of marketability may mean that he has to accept a lower price, but the buyer gets a high yielding security in which dealings will no doubt be allowed when Treasury control is lifted. The present refusal of permission to deal, is not, in fact, any reflection on the merits of the shares, but seems to arise from an official inability to distinguish between issues requiring fresh money and issues which merely involve the transfer of ownership of existing shares. The former are, of course, rightly subject to control, but the latter have no effect on the amount of money available for investment in Government securities. From the Stock Exchange point of view the present state of affairs means that members are deprived of a certain amount of perfectly legitimate business, while from the point of view of the investing public it is unfortunate that these placings can be made without disclosure of the information which the Stock Exchange Committee would require before granting permission to deal. This seems to be a case where control should be abandoned by the authorities and left to the normal supervisory activities of the Stock Exchange.

Australian Repayment

The announcement that Australia is to repay in cash the £4½ million of 3½ per cent. Loan which matures on January 1 has drawn attention to the recent improvement in the Commonwealth's external position. This improvement owes a lot to the bulk financing of Australian primary production by the British Government, as well as to the war-time limitation of imports into the Dominion. The result has been that Australian sterling balances at around £90 million are 25 per cent. higher than a year ago. This is a welcome improvement, which, if maintained, will place Australia in a strong position to meet her heavy loan maturities in 1945. The 1944 maturities only amount to about £12 million, but there are over £100 million of Commonwealth and State obligations, which are optionally repayable in 1945 and carry interest at 5 per cent.

– Points from Published Accounts

P. & O. Changes

Recent accounting recommendations, and the widespread discussion of accounting principles which they have induced, have led to useful changes in the method of presenting a great many company accounts. The origin of the alterations made in the accounts of the Peninsular and Oriental Steam Navigation Company may, however, be fairly traced further back—to the note on this company which ACCOUNTANCY published a year ago. We then made a plea for the more logical arrangement of debit items in the profit and loss account, pointing out that allocations which appeared to have an optional nature were intermixed with charges clearly ranking against the profits of the year, and that they were given an apparent precedence above that accorded to debenture interest payments. The amounts involved were so substantial, both absolutely and in relationship to the sums distributed by way of dividend, that we suggested they should be brought together and placed after the debenture interest debit, if not transferred to a separate appropriation account. The company has chosen to adopt the second method by inaugurating an appropriation account in which the allocations to reserves have been segregated along with the dividends paid and proposed. The clearer view thus obtained is of great importance, for these allocations absorb £500,000 of the net profit of £764,271. The company is merely following current practice in showing dividend requirements at their net amount, instead of gross as formerly; but this is only part of a major reform which too many companies resist, the tax provision now being stated separately. With dividend payments shown at their net sum and investment income brought in at its gross amount the disclosed tax provision relates to the whole of the profits. It is thus possible to see at a glance how net trading profits of £1,552,038 have been divided—£764,271 earmarked for taxation, £259,701 distributed to shareholders and £528,067 added to reserves and the carry-forward. Various reserves made in the past four years and not now required for their original purpose have been grouped with a contingency reserve previously included in sundry creditors to constitute a new disclosed contingency revenue of £1,300,000. The taxation reserve is, however, still included with creditors under the heading of current liabilities, and its total is not indicated. A more fundamental criticism is that no consolidated accounts are presented.

Tate & Lyle

Tate & Lyle is another company to have made useful alterations in the method of drawing up the accounts. Here again the amount of the tax provision is now disclosed, and as the sum of £798,251 in question relates to the whole of the profits it may be strictly compared with the balance of £509,263 left available for distribution to shareholders. Two consequences are that the result of trading is shown at a much earlier stage than previously—the trading profit is £1,356,052, against £1,403,305—and that dividends are deducted at their net amount instead of at their gross amount. The latter change means that the net profit of £509,263 is not on all fours with that of £1,011,357 disclosed a year ago, as the earlier figure included a very substantial tax content. That content can, of course, be calculated from the information given in the 1941-42 accounts, but the directors have not left it for shareholders to essay the task. In a parallel column they have included figures for 1941-42 adjusted so as to provide a straight comparison. "Provision for taxation and other accrued and estimated charges" is included at an unstated amount in sundry creditors, but "provision for taxation in advance of the current fiscal year" is disclosed at £696,000 and grouped under the generic heading of surplus and reserves.

Wailes Dove Bitumastic

A real attempt to make its accounts truly informative, and, moreover, to help the shareholder in "reading" them, has been made by Wailes Dove Bitumastic. Not only have the assets and liabilities been grouped in a logical classification under six main heads, but the previous omnibus item for fixed assets has been split into its component parts. In the new grouping a distinction has been made between free reserves (the general reserve and the balance of the appropriation account), which are joined with the capital, and earmarked reserves and provisions, which are included under the heading "current liabilities and provisions." Among these the taxation provision is given a precise significance, for it is described as including "estimated liability for income tax and excess profits tax on profits for year to date." The advantages which shareholders should find in this new mode of presentation are admirably pointed in the directors' report, which shows clearly how the figure of £267,829 for share capital, surplus and reserve is represented by fixed assets, intangible items and other assets. Here, as in the balance sheet itself, an unnecessary distinction is drawn between investments in British Government and other securities and current assets. The latter are shown to have a total of £183,419, as compared with current liabilities of £113,802; but the figure would be raised to £244,868 by adding in the investments mentioned. As it is, these are grouped with shares in subsidiary companies, £4,388, to make a total of £65,837; and this procedure may have been dictated by the desire to emphasise that, at a time when the value of the investments in subsidiaries cannot be determined, the total book value of the investments is fully represented by the market worth of the general investments alone. Interest and dividend receipts are now brought in at their gross amount while dividend disbursements are deducted at their net amount. The effect is to indicate how profits are divided between the tax-gatherer and shareholders, and how the sum attributable to the latter has been allocated between dividend payments and reserve appropriations. Comparative figures for the previous years overcome the difficulties so often encountered by shareholders when a change in accounting methods is introduced.

Jays & Campbells (Holdings)

The accounts of Jays & Campbells (Holdings) for the year to January 31 were published mid-way through December. To this lag of ten months is added a further time "spread," because the dividends shown in the revenue account as having been received from the operating subsidiaries relate to financial periods of those companies ended between August 26, 1939, and June 30, 1941. Incidentally, the total net dividend receipts of £138,940 include £52,796 which was received before the issue of the last accounts and out of which the holding company paid an ordinary dividend of 3 per cent. for 1941-42. The revenue now disclosed has, therefore, to bear the cost of two dividends on the ordinary capital.

LAW

Legal Notes

EMERGENCY LEGISLATION

Defence (General) Regulations—Offence by Corporation—Company's Liability for Agent's Acts.

In *Director of Public Prosecutions* v. *Kent and Surrey Contractors, Ltd.* (1943, W.N. 252), two charges were brought against the company. The first was that, with intent to deceive, they made use, for the purpose of the Motor Fuel Rationing (No. 3) Order, 1941, of a document, namely a fortnightly vehicle record in respect of a specified vehicle, which was false in a material particular in that it misstated the journeys and mileage done by the vehicle in question over a certain period, contrary to the Defence Regulations. The second charge was that, in furnishing information on the appropriate forms in respect of the said vehicle for the purposes of the order, the company made a statement which they knew to be false in a material particular, contrary to the Regulations. The company had sent to the proper authority on the prescribed form the record containing the alleged misstatement, the document bearing the signature of the company's transport manager. The justices found that the record was false as alleged, and false to the knowledge of the company's servants. The justices dismissed the charges, however, on grounds wrong in law. They held that a body corporate could not in law be guilty of the offences charged, since their commission implied an act of will or state of mind and they could not be competent to a corporation. But on appeal, the Divisional Court overruled the justices. They said that it was plain and governed by authority that while *prima facie* a principal, including a corporation, was not to be made criminally liable for the act of a servant or agent, yet the legislature might, as in this instance, prohibit an act in such words as to make the prohibition absolute. In that case a principal, including a corporation acting through its servants (by whom alone it could act or speak or think) was liable if the act prohibited was in fact done by its servants.

EXECUTORSHIP LAW AND TRUSTS

Soldier's Will—Home Guard killed on duty—not "in actual military service" at material date.

The vexed question of when a member of the armed forces can be said to be "in actual military service" has provided several decisions already reported in ACCOUNTANCY. Unless he complies with that condition, he cannot enjoy the privilege of making a valid though unorthodox will within the provisions of Section 11 of the Wills Act, 1837. In *the Estate of Anderson Deceased* (1943, 2 All E.R. 609), Lord Merriman had to consider the position of a member of the Home Guard who was killed on home guard duties. The deceased made a valid will dated May 29, 1940. About July 25, 1941, he gave instructions to his solicitor for the preparation of a new will, which was never executed. On August 1, 1941, the deceased, who was a member of the Home Guard, was accidentally shot dead whilst instructing his Home Guard platoon in musketry. The defendants submitted that when the instructions to the solicitor were given, the deceased was "a soldier being in actual military service" and that, therefore, his dispositions made in the form of instructions to his solicitor should be admitted to probate as a "soldier's will." Evidence was given that during the Battle of Britain in 1940, the deceased's platoon at Angmering in Sussex was frequently ordered to "stand to," but that no such order had been given to that platoon since November, 1940. It was certain that no such order was in operation on July 25, 1941, when the deceased instructed his solicitor to prepare a new will. He had expressed his intention of calling to sign the new will on his next visit to Worthing. Lord Merriman, P., said it was established that the true test was whether the testator was in fact "in actual military service," not at the time he met his death (that was immaterial) but on the date when he gave the instructions now sought to be admitted as a "soldier's will." The vital question must be determined by the court on the facts in relation to the individual, not in relation to all members of the armed forces serving in the United Kingdom. It was not disputed that a member of the Home Guard might, in certain circumstances, be in actual military service in this country. On the facts, the deceased, although "in actual military service" when he was killed, was not in such service when he instructed his solicitor in July, 1941. Therefore the alleged will of July 25, 1941, was invalid, and the will of May 29, 1940, remained effective.

Will—Condition subsequent—Annuitant resident in enemy territory.

In *Re Hall* (1944, W.M. 239), by her will dated 1936, a testatrix, who died on March 12, 1941, directed her trustees to stand possessed of a trust fund on trust to pay out of the income an annuity of £120 to La Comtesse de Prahas. If she should alienate or charge her annuity or become bankrupt or do anything whereby the annuity would become vested in or payable to any other person, such annuity should cease to be payable. During June and July, 1940, the Countess, who was a French national, was resident in unoccupied France, and she was still resident there when last heard of in April, 1942. The question arose whether her annuity ceased to be payable when the provisions of the Trading with the Enemy Act, 1939, came into operation as regarded unoccupied France, or whether it then became payable, under that Act, to the Custodian of Enemy Property. Uthwatt, J., said there was no suggestion that the annuitant had at any time alienated or charged the annuity. The condition was a direction that, in the event of her personally doing something in the way of charging the annuity or committing some particular act, the forfeiture should come into operation. The fact that, when the provisions of the Trading with the Enemy Act, 1939, came into force, she continued to order her life in the same way as previously by living in France, did not amount to the committing of any act or the suffering of any thing which brought the condition subsequent as to forfeiture into operation. The annuity was, therefore, payable to the Custodian of Enemy Property.

Administration—Sums in consideration of part services, payable after testator's death—Capital, not income.

The income of the estate, to which the life tenant is entitled, does not include payments contracted to be paid to the testator, or to his personal representatives after his death. Such payments are capital of the estate and the life tenant is only entitled to have them invested and to enjoy the interest or income arising therefrom. This was illustrated in *Re Payne Deceased* (1943, 2 All E.R. 675). The testator, who died in 1941, had by his will made in 1934 devised and bequeathed to his widow a life interest in all his property. By an agreement made in 1937, supplementary to a contract of service dated 1936, between the testator and a company, it was

provided that the testator should receive as remuneration £600 a year, and as further remuneration, a share in a percentage of the company's net profits in each financial year. In the event of his incapacity or death, he or his personal representatives were to be entitled to receive the testator's fixed salary for six months after his death and the percentage of profits for five years after his death. The question for determination was whether, on the true construction of the will, the sums payable after death by virtue of the agreement formed part of the income of the estate payable to the widow. Uthwatt, J., held that all the sums in question were remuneration for past services rendered by the testator, and therefore formed part of the capital. The widow was only entitled to the income thereon.

INSOLVENCY

Act of Bankruptcy—Bankruptcy Act, 1914, Sections 1 and 4—Absence from dwelling-house a continuing act of bankruptcy.

In *Re Burrows* (60 T.L.R. 70), the debtor, with intent to delay or defeat his creditors, departed from his dwelling-house on May 1, 1942, and contrived to absent himself with that intent. On October 20, 1942, a petition in bankruptcy was presented against him, and on December 1, 1942, a receiving order was made, stating that the act of bankruptcy had been committed on May 1, 1942. On January 23, 1943, he was adjudicated bankrupt. The trustee in bankruptcy contended that his title as trustee related back to May 1, 1942. Morton and Cohen, JJ., held that on the true construction of Sections 1, 4, and 37 of the Bankruptcy Act, 1914, the trustee could not rely on any act of bankruptcy earlier than the "absence" relating to the period of within three months of the date of the presentation of the petition, and that therefore his title related back, not to the departure from the dwelling-house, but only to the beginning of the three months' period.

Bankruptcy Appeal against adjudication—Right of creditors to be heard—"Person aggrieved."

When the creditors at their meeting have passed a resolution that an application shall be made for an adjudication order, the matter passes out of their hands. Creditors who have opposed that resolution cannot be heard on the application for the order nor on any appeal from the order. This applies both to the petitioning creditors and to ordinary creditors. In *Re Baron* (1943, 2 All E.R. 662), a receiving order was made against the debtor on July 8, 1942, and at a meeting of creditors on February 24, 1943, it was resolved that the debtor should be adjudged bankrupt. On the application for the adjudication, certain creditors appeared and argued against the order being made, but it was made. The debtor appealed from that order and the creditors asked to be heard on the appeal. The Chancery Division (Morton and Uthwatt, J.J.) held that once the general body of creditors have resolved that an application for an adjudication order shall be made, it is not open for any creditor to intervene in the proceedings, and the creditors are not entitled to be heard on the appeal. In such circumstances, a creditor is not a "person aggrieved" within the Bankruptcy Act, 1914, Section 108 (2). By Section 18 (1) of that Act, where a receiving order is made against a debtor, if the creditors at the first or any adjourned meeting by ordinary resolution resolve that the debtor be adjudged bankrupt, the court shall act accordingly; thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee. An ordinary resolution is defined by Section 167 as one decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors, and voting on the resolution. Morton J. said that the scheme of the Act was that the creditors in the present case had resolved that the debtor be adjudged bankrupt, whereupon the matter passed out of the creditors' hands. The general body had made its decision, and it was not for any individual creditor to intervene in the proceedings which followed as a result of that decision. If individual creditors could demand to be heard in an appeal of that kind, it would be not only productive of grave inconveniences, but contrary to the scheme which the legislature had laid down.

Bankruptcy—Petition—Stay—Application for adjustment order pending.

As a general rule, debtors who seek relief under the Liabilities (War-Time Adjustment) Act, 1941, are also subject to bankruptcy proceedings. But in *Re A Debtor, The Debtor* v. *The Petitioning Creditors and the Official Receiver* (1943, 2 All E.R. 594), the Court of Appeal made it clear that a *bona fide* application under the Act should be disposed of before a bankruptcy petition is proceeded with. Bankruptcy proceedings had been commenced against the debtor, who thereupon applied in the prescribed form for an adjustment order to be made under the 1941 Act. When the petition came on for hearing, an application for an adjournment was made until the pending application for an adjustment order was disposed of. The registrar held that the debtor, who was a Dutch subject and in the Dutch army, was not ordinarily resident in England, and on that ground, *inter alia*, he refused an adjournment. The Court of Appeal held that: (1) the debtor was ordinarily resident in England within the meaning of the Bankruptcy Act, Section 4 (1); (2) the registrar had exercised his discretion on a wrong ground and should have granted an adjournment until the application for an adjustment order had been disposed of. The receiving order must therefore be rescinded. Lord Greene, M.R., pointed out that the debtor had come to England at the time of the invasion of France and subsequently became a member of the Netherlands Army. It had been submitted on those facts that the debtor was not ordinarily resident in England, but that submission appeared to have been made by inadvertence, because under the Bankruptcy Act, 1914, Section 4 (1), a bankruptcy petition can only be presented against a debtor if the debtor is domiciled in England or within a year before the presentation of the petition has ordinarily resided or had a dwelling-house or place of business in England.

Emergency Acts and Orders

In our November, 1939, issue we published the first instalment of a comprehensive guide to the wartime enactments and Orders which most concern the accountant. The forty-seventh instalment is given below. The summaries are not intended to be exhaustive, but only to give the main content of an Act or Order, the full text of which should be consulted if details are required.

ORDERS

EXPORTS

Nos. 1476, 1636. *Export of Goods (Control) Orders*, 1943, *Nos.* 8 *and* 9.

Some further amendments are made in the list of goods subject to export control. No goods may be exported to

Cyrenaica, Saudi Arabia, Tripolitania, Kuwait, Bahrein Islands, or Muscat.

(See ACCOUNTANCY, October, 1943, page 18.)

INCOME TAX

No. 1669. *Deduction of Income Tax* (*Schedule E*) (*Amendment No.* 6) *Regulations*, 1943.

Employers are required to deduct tax from wages at current rates until April 5, 1944. The tax deducted must be paid to the Collector and returns rendered not later than April 19, 1944. Employers must send particulars to the Inspector of Taxes within ten days of the commencement or termination of employment of any person whose remuneration exceeds £2 per week.

(See ACCOUNTANCY, November, 1943, page 39, and December, page 52.)

LIMITATION OF SUPPLIES

No. 1613. *Limitation of Supplies* (*Heating Apparatus*) (*No.* 3) *Order*, 1943.

The existing restrictions on the supply of domestic gas and electrical heating apparatus are continued unchanged for the period December 1, 1943, to May 31, 1944. The quota remains at 15 per cent. of supplies during the standard period, June 1 to November 30, 1939.

(See ACCOUNTANCY, November, 1943, page 39.)

TRADING WITH THE ENEMY

No. 1632. *Trading with the Enemy* (*Specified Persons*) (*Amendment*) (*No.* 16) *Order*, 1943.

The list of persons deemed to be enemies is again amended.

(See ACCOUNTANCY, December, 1943, page 59.)

Society of Incorporated Accountants

COUNCIL MEETING

THURSDAY, NOVEMBER 25, 1943

Present: Mr. Richard A. Witty (President) in the chair, Mr. Fred Woolley (Vice-President), Mr. A. Stuart Allen, Mr. R. Wilson Bartlett, Mr. W. Norman Bubb, Mr. W. Allison Davies, Mr. E. Cassleton Elliott, Mr. M. J. Faulks, Mr. Alexander Hannah, Mr. C. A. G. Hewson, Sir Thomas Keens, Mr. Henry Morgan, Mr. T. Harold Platts, Mr. F. A. Prior, Mr. R. E. Starkie, Mr. Joseph Stephenson, Mr. Percy Toothill, Mr. Joseph Turner, and Mr. A. A. Garrett, Secretary.

The President expressed the congratulations of the Council to Mr. Joseph Stephenson, O.B.E., upon his nomination as a Sheriff for Cambridgeshire and Huntingdonshire; to Mr. R. Wilson Bartlett, J.P., upon his nomination as a Sheriff for the county of Monmouth; and to Mr. T. Harold Platts upon his election as Mayor of Droitwich.

CONTRIBUTIONS TO WAR CHARITIES

The following resolution was adopted: "That the Council approve immediate contributions from the Society's funds of (*a*) three hundred guineas to the Joint War Organisation of the British Red Cross Society and the Order of St. John of Jerusalem, and (*b*) one hundred guineas to the Y.M.C.A. War Fund; a resolution confirming these payments to be submitted to the members of the Society at the annual general meeting in May, 1944."

DEATHS

The Secretary reported the death of each of the following members:

Green, Frederick William (Associate), Sheffield.
Clowes, Harold (Associate), Manchester.

EXAMINATION RESULTS IN SOUTH AFRICA

JULY, 1943

Passed in Final

Alphabetical Order

CODD, HERBERT ALAN, Clerk to Whiteley Brothers, Johannesburg.

EBDON, LAURENCE ARTHUR, Clerk to A. Hopewell, Durban.

PARKER, HARRY MEWES, Clerk to H. A. Olsen (H. A. Olsen, Holman, Garsh & Co.), Johannesburg.

Passed in Intermediate

Alphabetical Order

MCCARTHY, CHARLES MAURICE, Clerk to Wright, Fairbrother & Steel, London. (Serving with H.M. Forces.)

(*Two candidates failed to satisfy the Examiners*).

VICTORIAN BRANCH

At a recent general meeting held in Melbourne, Mr. C. V. Robertson was elected President of the Victorian Branch of the Society, and Mr. C. C. Jackson Vice-President. Mr. H. G. Balding was elected a member of the Committee. The vacancy in the office of President was caused by the regretted death of Mr. Arthur S. Baillieu.

PERSONAL NOTES

Mr. L. S. P. Walpole, A.S.A.A., formerly Deputy Borough Treasurer of Bethnal Green, has been appointed Borough Treasurer in succession to Mr. E. W. Bailey, A.S.A.A., who retired on December 31, 1943.

Messrs. Page, Bume & Black, incorporating J. Cyril Page & Co., Liverpool, announce that they are closing their Hoylake branch. They will practise in future at 7, Victoria Street, Liverpool 2.

Messrs. Daniel Mahony, Taylor & Co., Incorporated Accountants, announce that Mr. Daniel Mahony has retired from the firm of Messrs. Farr, Rose & Mahony, and is now carrying on the practice of the late Mr. Gordon H. Taylor, jointly with his own, at 3 and 4, Great Winchester Street, London, E.C.2.

OBITUARY

EDWARD HALL WIGHT

We regret to report the death of Mr. Edward Hall Wight, F.S.A.A., Glasgow, which took place on November 27. After serving for some time with a Dublin firm, Mr. Hall Wight commenced practice in Glasgow, having in 1898 qualified as an Incorporated Accountant. He was for many years a faithful attender at the meetings of the Scottish Council and took a keen interest in the work of the profession in Scotland and, particularly in its early stages in the Glasgow Incorporated Accountants' Students' Society.

ARCHIBALD GOOLD GRAHAM BARCLAY

It is with great regret that we report the death, on December 16, at the early age of 47, of Mr. Archibald G. G. Barclay, F.S.A.A., Town Chamberlain of Coatbridge. Mr. Barclay, who was trained in the office of the Town Chamberlain of Clydebank, was appointed Depute Chamberlain of Coatbridge in 1923, and Chamberlain in 1937. He qualified as a member of the Society in 1931 and took a lively interest in the work of the Scottish Branch. His wife died two years ago, and he is survived by three daughters.